



## General terms and conditions for the purchase and maintenance of hardware

### A COMMON INTRODUCTORY PROVISIONS

#### 1 Subject matter and validity

- 1.1 These general terms and conditions (GTC) govern the conclusion, content and performance of contracts for the purchase of hardware (including the associated operating software) and the maintenance thereof.
- 1.2 Anyone (seller) submitting an offer to the buyer thereby accepts these GTC, unless stated otherwise in the quote request. Amendments and addenda to these GTC shall require written agreement.
- 1.3 Unless otherwise expressly provided in the contract document, the provisions concerning delivery, acceptance and warranty in accordance with section 25 refer separately and independently of each other to the hardware purchase and to the maintenance of the hardware. The warranty rights arising from the maintenance contract shall not affect those arising from the purchase contract.

#### 2 Offer

- 2.1 The offer, including demonstrations, is free of charge unless stated otherwise in the quote request.
- 2.2 The offer is to be prepared on the basis of the buyer's quote request. If the offer deviates from the quote request or the GTC of the buyer, the offer must indicate this expressly.
- 2.3 The seller shall indicate value added tax and prepaid disposal fees separately in the offer.
- 2.4 The offer remains binding for the period indicated in the quote request. If there is no such indication, a period of six months after receipt of the offer shall apply.

#### 3 Deployment of employees

- 3.1 For goods/services provided by the seller's employees at the buyer's premises, the seller shall deploy only carefully selected and well trained staff. It shall replace employees who do not have the requisite expertise or who otherwise interfere with or jeopardise performance of the

contract. In doing so, it shall pay particular attention to the buyer's interest in continuity.

- 3.2 For the provision of goods/services in accordance with section 3.1, the seller shall deploy only employees who have the authorisations required for the provision thereof.
- 3.3 Insofar as the seller supplies goods/services onsite, it shall comply with the internal regulations, especially the buyer's house rules. The seller shall in any event comply with the relevant safety provisions. The buyer shall provide the necessary information in a timely manner. The seller shall impose these obligations on its employees, subcontractors and sub-suppliers, as well as on the third parties it calls upon.
- 3.4 The provisions set out in section 3 shall also apply to other staff deployed by the seller for contract performance, including freelancers.

#### 4 Involvement of third parties

- 4.1 For goods/services rendered by employees of the seller at the premises of the buyer, the seller may engage third parties (e.g. suppliers, subcontractors) for the provision of its goods/services only with the prior written consent of the buyer. The seller shall remain liable for the provision of goods/services in accordance with the contract by the third parties called upon.
- 4.2 Substitution is excluded unless otherwise expressly agreed.
- 4.3 The parties shall impose the obligations set out in sections 3 (deployment of employees), 5 (workplace health and safety provisions, employment conditions, equal pay for men and women, and environmental law), 23 (confidentiality) and 24 (data protection and data security) on the third parties called upon (e.g. suppliers, subcontractors, substitutes).

#### 5 Workplace health and safety provisions, employment conditions, equal pay for men and women, and environmental law

- 5.1 For goods/services provided in Switzerland within the framework of contract performance, the seller shall comply with the workplace health

and safety provisions and employment conditions applicable at the place of performance, the notification and authorisation duties in accordance with the Federal Act of 17 June 2005 on Measures to Combat Illegal Employment (IEA)<sup>1</sup> and the provisions on the equal treatment of men and women in terms of equal pay. The employment conditions shall be deemed to encompass collective and standard employment contracts or, where no such contracts exist, the actual employment conditions customary for the location and occupation.

- 5.2 For goods/services provided abroad within the framework of contract performance, the seller shall comply with the provisions applicable at the place of performance, but as a minimum with the Core Conventions of the International Labour Organization (ILO) in accordance with Annex 6 to the PPA<sup>2</sup>.
- 5.3 If the seller seconded workers from a foreign country to Switzerland to provide the goods/services, compliance with the provisions of the Posted Workers Act of 8 October 1999<sup>3</sup> must be ensured.
- 5.4 For goods/services provided in Switzerland within the framework of contract performance, the seller shall comply with the provisions of Swiss environmental law applicable at the place of performance, namely the Environmental Protection Act (EPA)<sup>4</sup>, the Waters Protection Act (WPA)<sup>5</sup>, the Nature and Cultural Heritage Act (NCHA)<sup>6</sup>, the Forest Act (ForA)<sup>7</sup> and the Chemicals Act (ChemA)<sup>8</sup>, as well as the ordinances based thereon.
- 5.5 For goods/services provided abroad within the framework of contract performance, the seller shall comply with the environmental protection provisions applicable at the place of performance, but at least with the agreements on the environment in accordance with Annex 2 to the PPO<sup>9</sup> that are relevant for the seller's performance.
- 5.6 The seller is obliged to contractually impose the requirements according to sections 5.1 to 5.5 above on its subcontractors.

- 5.7 If the seller itself or a third party engaged by it violates obligations arising from this section 5, it shall be liable to pay a contract penalty unless it proves that it is not at fault. The penalty shall amount to 10% of the agreed maximum total remuneration including optional goods/services, or 10% of the remuneration agreed for the subsequent 12 months in the case of permanent contracts, or 10% of the remuneration for the preceding 12 months in the case of a shorter remaining contract term, but at least CHF 3,000 per violation and no more than a total of CHF 100,000 per contract; in the case of a framework contract, this upper limit shall apply once for the entire contractual relationship. Payment of the contract penalty shall not imply release from compliance with contractual obligations and shall be offset against claims for damages.**

## **6 Supply of replacement parts**

The seller shall guarantee the buyer the supply of hardware replacement parts for at least five years from the handover or installation of the hardware.

## **7 Definitions**

- 7.1 Contract: all of the documents belonging to the agreement (i.e. main document plus all associated components such as the GTC and other appendices).
- 7.2 Contract document: the main document belonging to the agreement (i.e. without additional associated components such as the GTC and other appendices).
- 7.3 Incident: a malfunction that limits or interferes with the contractually agreed usability or availability of the hardware (including operating software). Incidents also include malfunctions caused by third parties, especially due to interactions with software or other hardware.

## **B PURCHASE OF HARDWARE**

### **8 Handover and installation**

- 8.1 The hardware (including the associated operating software) shall be handed over at the place

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<sup>1</sup> SR 822.41  
<sup>2</sup> SR 172.056.1  
<sup>3</sup> SR 823.20  
<sup>4</sup> SR 814.01  
<sup>5</sup> SR 814.20

<sup>6</sup> SR 451  
<sup>7</sup> SR 921.0  
<sup>8</sup> SR 813.1  
<sup>9</sup> SR 172.056.11

of performance upon signature of the delivery note by a person designated by the buyer.

- 8.2 At the request of the buyer and against separate payment, the seller shall take care of installing the hardware (including the associated operating software). Any cooperation duties/obligations of the buyer shall be conclusively agreed in the contract document.

## **9 Use of the operating software**

The type and scope of use of the operating software inextricably associated with the hardware shall be governed by the intended purpose of the hardware. The buyer may sell the hardware (including the operating software) to third parties, provided that the buyer renounces its own use thereof.

## **10 Documentation**

- 10.1 Together with the hardware (including the associated operating software), the seller shall supply the buyer with the agreed quantity of the associated documentation (installation and user manual) in electronic format or hard copy in the agreed languages.
- 10.2 The buyer may copy and use the documentation for use in accordance with the contract.

## **11 Instruction**

Where agreed and against separate payment, the seller shall furnish initial instruction to be determined according to the scope and target audience.

## **12 Import regulations**

The seller ensures compliance with any export restrictions and import regulations from the place of origin to the place of delivery in accordance with the contract. The seller informs the buyer in writing about any export restrictions in the country of origin.

## **C MAINTENANCE AND SUPPORT**

### **13 Content and scope of maintenance**

- 13.1 The goods/services to be provided shall be agreed in the contract.
- 13.2 Unless otherwise agreed in the contract, maintenance of the hardware encompasses keeping it in working order (on a preventive ba-

sis) and restoring it to working order (remediation of malfunctions and errors) through repair and replacement of defective parts.

- 13.3 The seller is required to keep impeccable replacement material on hand for the duration of the contract or to deliver it within a reasonable timeframe.

## **14 Support**

- 14.1 The support services to be rendered shall be agreed in the contract.
- 14.2 Unless otherwise agreed in the contract, support encompasses advice and assistance to the buyer with respect to the use of the hardware covered by the contract (including the associated operating software).
- 14.3 If the seller is required to render support services, it undertakes to establish and maintain an efficient organisation; the seller shall inform the buyer immediately of the communication channels for enquiries and of the competent contact persons. The contract shall specify whether and how enquiries and reports may be transmitted in writing, by telephone or electronically.

## **15 Notification duty**

The seller shall immediately inform the buyer in writing of all facts and circumstances it has noted or that are recognisable to it that may interfere with or jeopardise the maintenance of the hardware (including the associated operating software). The seller shall regularly inform the buyer about technical improvements concerning the hardware (including the associated operating software).

## **16 Standby, reaction and repair time**

- 16.1 Standby time  
During the maintenance standby time set out in the contract, the seller receives reports concerning malfunctions and requests through the agreed communication channels. The type and scope of the goods/services to be provided during the standby time shall be agreed contractually.
- 16.2 Reaction time  
The reaction time covers the period in which the seller has to start analysing and remedying a malfunction from the time of receipt of the malfunction report. It shall be agreed in the contract.

The parties shall jointly agree on the assignment of the respective priority based on the technical and economic needs of the buyer.

#### 16.3 Repair time

The repair time covers the maximum period from receipt of a malfunction report by the seller until the successful remedy of the incident. It shall be specified in the contract.

16.4 The seller shall notify the buyer that the malfunction has been remedied.

#### 16.5 Failure to comply with agreed timeframes

**If the seller fails to comply with one of the timeframes under sections 16.1 to 16.3, it shall be liable to pay a contract penalty unless it proves that it is not at fault. The amount of the penalty shall be set out in the contract on a case-by-case basis. In such cases, contract penalties are owed even if the goods/services were accepted subject to a corresponding reservation. Payment of contract penalties shall not release the parties from performance or compliance with their contractual obligations; penalties shall be offset against any compensation for damages.**

#### 17 Reports

At the buyer's request, the seller shall draw up a report after completion of each maintenance job and provide the buyer with a copy thereof.

#### 18 Start and duration

18.1 The contract will come into force upon signature by both parties, unless otherwise stated in the contract document. The contract is entered into for either a fixed or an indefinite period.

18.2 If the maintenance contract is concluded for an indefinite time period, it may be terminated in writing by the buyer at the end of a calendar month, unless otherwise agreed; however, the seller may not terminate the contract until after a contractually agreed term. The termination may also concern only individual good/services. Unless otherwise agreed, the notice period is twelve months for the seller and three months for the buyer.

18.3 The right to termination without notice for good cause remains reserved to both parties at all times. Good cause includes the following in particular:

- the occurrence of events or circumstances that make the continuation of the contractual relationship unreasonable for the terminating party, especially the persistent or repeated breach of essential contractual obligations;
- the official publication of the opening of bankruptcy proceedings or of a moratorium on debt enforcement concerning a party.

#### 19 Consequences of termination

The contracting parties shall specify in the contract which operating resources, data and documentation made available within the framework of the contractual relationship must be returned to the other party or destroyed upon termination of the contractual relationship and within what timeframe.

#### D COMMON FINAL PROVISIONS

#### 20 Place of performance and transfer of benefits and risks

20.1 The buyer determines the place of performance. Unless otherwise agreed, the place of delivery of the hardware (including the associated operating software) shall be considered the place of performance.

20.2 Benefits and risks are transferred to the buyer upon handover or installation.

#### 21 Default

21.1 If the parties fail to meet firmly agreed deadlines (expiry date transactions), they shall immediately be deemed to be in default, and in all other cases upon receiving a reminder.

**21.2 If the seller is in default, it shall be liable to pay a contract penalty unless it proves that it is not at fault. The penalty shall amount to 0.1% per commenced calendar day of delay, but no more than a total of 10% of the maximum total remuneration including optional goods/services per contract and case of default, or 10% of the remuneration agreed for the subsequent 12 months in the case of permanent contracts, or 10% of the remuneration for the preceding 12 months in the case of a shorter remaining contract term at the beginning of the default. It shall be owed even if the goods/services are accepted subject to a corresponding reservation. Payment of the contract penalty shall not imply release from compliance with contractual**

**obligations and shall be offset against any claims for damages.**

## **22 Remuneration**

- 22.1 The seller shall supply the goods/services at fixed prices. The remuneration shall be either one-off or recurring.
- 22.2 The contractually agreed remuneration covers all work which is necessary for proper performance of the contract. In particular, it includes all contractually agreed ancillary deliverables, material, packaging, transport and insurance costs, the transfer or use of rights, documentation, secretarial and infrastructure costs (overheads), social benefits, expenses, fees and public levies. Any value added tax or import tax due shall be payable together with the remuneration, but must always be indicated separately in the offer, contract and invoice.
- 22.3 The remuneration shall be due upon handover of the hardware and the associated operating software or installation thereof, subject to any contractually agreed payment plan. The seller shall assert the remuneration due by submitting an invoice. The due date of the remuneration and the billing frequency for maintenance shall be based on the contract.
- 22.4 The buyer shall make outstanding payments within 30 days of receipt of the invoice.
- 22.5 For central Federal Administration procurements<sup>10</sup>, the seller is obliged to submit an electronic invoice<sup>11</sup> to the buyer if the contract value exceeds CHF 5,000 (excl. VAT). The buyer determines the delivery options.
- 22.6 Subject to contractual arrangements to the contrary, the seller may, with a three-month notice period, demand a justified adjustment of the recurring remuneration as of the beginning of the next calendar year, but at most in line with the trend of Switzerland's Consumer Price Index (CPI).

## **23 Confidentiality**

- 23.1 The parties shall treat as confidential all facts and information that are neither obvious nor generally accessible. In case of doubt, facts and information are to be treated confidentially. The parties undertake to take all precautions that are commercially reasonable and technically

and organisationally possible to ensure that confidential facts and information are effectively protected from access and knowledge by unauthorised parties.

- 23.2 The confidentiality obligation shall exist before the contract is concluded and shall persist after termination of the contractual relationship.
- 23.3 The confidentiality obligation will not apply for the buyer if it is obliged to publish the following facts and information: name and address of the seller, item(s) procured and mandate value, award procedure carried out, date of contract conclusion and commencement, and timeframe of contract execution. This shall be without prejudice to the mandatory duties of disclosure under Swiss law (e.g. as per the FoIA<sup>12</sup>, PPA<sup>13</sup>, PPO<sup>14</sup>).
- 23.4 The confidentiality obligation shall not be considered breached if confidential information is transmitted by the buyer within the group (or within the Federal Administration) or to any third parties called upon. This shall apply to the seller insofar as transmission is necessary for contract performance or contractual provisions are transmitted within the group.
- 23.5 Without the written consent of the buyer, the seller may not advertise the fact that cooperation exists or existed with the buyer, and the seller may not list the buyer as a reference either.
- 23.6 The parties shall impose the confidentiality obligation on their employees, subcontractors, sub-suppliers and other third parties called upon.
- 23.7 If one of the parties violates the confidentiality obligations above, it shall be liable to pay a contract penalty to the other party unless it proves that it is not at fault. Per violation, the penalty shall amount to 10% of the maximum total agreed remuneration including optional goods/services, or 10% of the remuneration agreed for the subsequent 12 months in the case of permanent contracts, or 10% of the remuneration for the preceding 12 months in the case of a shorter remaining contract term, but no more than CHF 50,000 in total per case. Payment of the contract penalty shall not imply release from compliance with contractual obligations and**

<sup>10</sup> Art. 7 of the GAOO (SR 172.010.1)

<sup>11</sup> <https://www.efv.admin.ch/efv/en/home/efv/erechnung/aktuell.html>

<sup>12</sup> SR 152.3

<sup>13</sup> SR 172.056.1

<sup>14</sup> SR 172.056.11

**shall be offset against any claims for damages.**

- 23.8 Irrespective of these confidentiality agreements, the seller and persons acting on its behalf may be deemed auxiliaries of an authority and thus be subject to official secrecy. A breach of official secrecy is punishable under Article 320 of the SCC<sup>15</sup>.

## **24 Data protection and data security**

- 24.1 The parties undertake to take the economically reasonable and technically and organisationally possible precautions to ensure that the data arising in the course of contract execution, made available for proper contract performance or created on their premises is effectively protected against unauthorised access by third parties. This applies especially to security-related data and personal data. In this regard, all statutory requirements must be complied with<sup>16</sup>.
- 24.2 Personal data may be processed only for the purpose and to the extent necessary for contract performance and execution. To that extent and for that purpose, personal data may also be transmitted to a company in Switzerland or abroad associated with one of the contracting parties, provided that the prerequisites set out in the provisions of Swiss data protection legislation are met.
- 24.3 If the seller is provided with data of the buyer within the scope of contract performance, the seller shall be obliged to return such data after termination of the contract and to irrevocably delete or destroy it on both primary and secondary media (test or backup media, etc.). The deletion or destruction of the data shall be carried out in accordance with the currently recognised state of the art and shall be confirmed to the buyer in writing upon request. The return, deletion or destruction of the data must take place within 30 days after contract termination. If the data on backup media cannot be deleted, the backups must be protected in accordance with the recognised state of the art and must be deleted or destroyed within one year at the latest. If the seller is subject to a legal obligation to retain data, the return, deletion or destruction of the data subject to this retention obligation must

take place within 30 days after the end of the retention period.

- 24.4 The parties shall impose these obligations on their employees, subcontractors and sub-suppliers, as well as on other third parties called upon.
- 24.5 Any right of the buyer to audit the seller's security measures with regard to data protection and data security shall be the subject of a separate contractual agreement between the parties.

## **25 Warranty**

- 25.1 The seller guarantees that it hands over the hardware (including the associated operating software) in good faith with all the agreed and assured characteristics required for the intended use and that it complies with the relevant legal requirements. The seller furthermore guarantees that the goods/services supplied have all the agreed and assured characteristics, as well as the characteristics that the buyer may in good faith also expect without any special agreement. The seller assumes a warranty of 24 months from the handover or installation of the hardware (including the associated operating software) or from receipt of the fully supplied, contractually agreed goods/services. During the warranty period, defects may be notified at any time. Even after expiry of the warranty period, the seller is required to honour claims arising from the warranty rights of the buyer set out below, provided that the defects were brought to the seller's attention in writing during the warranty period.
- 25.2 The seller guarantees that it is in possession of all the rights to supply its goods/services in accordance with the contract. In particular, it is entitled to distribute the operating software delivered with the hardware and to grant the buyer the rights to use the operating software according to the contractually agreed scope.
- 25.3 In the event of a defect, the buyer shall have the option of requesting rectification, delivery of hardware (including the associated operating software) without defects, or deducting the corresponding value reduction from the remuneration. If there are substantial defects, the buyer may withdraw from the contract.

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<sup>15</sup> SR 311.0

<sup>16</sup> At the time of going to press, in particular: the Federal Act on Data Protection (FADP; SR 235.1) and the Federal Act on Information Security in the

Confederation (Information Security Act, ISA; SR 128), in each case including the implementing ordinances

- 25.4 If the buyer requests rectification or a replacement delivery, the seller shall remedy the defects by the imposed deadline and bear the costs arising therefrom.
- 25.5 If the seller fails to carry out the requested rectification or replacement delivery, or fails to do so successfully, the buyer shall have the option
- a. of deducting the corresponding value reduction from the remuneration, or
  - b. of demanding that the necessary documents be handed over – to the extent the seller is entitled to hand them over – and to have the necessary measures carried out by a third party at the expense and risk of the seller, or
  - c. of withdrawing from the contract.
- 25.6 If damage has occurred due to a defect, then the seller shall additionally be liable for compensation therefor in accordance with section 27.

## **26 Breach of property rights**

- 26.1 The seller shall immediately, at its own expense and risk, defend against claims asserted against it by third parties for a breach of property rights within the scope of its contractual goods/services. If a third party brings proceedings against the seller, the seller must immediately inform the buyer in writing. If the third party asserts the claims directly against the buyer, the seller shall, upon the first request of the buyer and to the extent possible under the applicable code of procedure, support its defence and participate in the dispute. The seller undertakes to bear all costs (including compensation for damages) incurred by the buyer as a result of the defence, the conduct of the proceedings and any settlement of the legal dispute. In the event of a settlement, the seller shall be required to assume the agreed payment to the third party only if the seller gave its prior consent.
- 26.2 If, due to a breach of property rights for which it is not responsible, the buyer is prevented from using or availing itself of the contractual goods/services in whole or in part, it shall grant the seller a reasonable period of time to either modify or replace its goods/services in such a way that they do not breach any third-party rights or else to procure a licence from the third party, at the seller's discretion, while retaining the same scope of performance. The seller shall bear all associated costs and reimburse the buyer for its expenses. If the seller fails to im-

plement any of these options within the deadline, the buyer may, at its discretion, withdraw from the contract with immediate effect or forgo the use of the relevant part of the goods/services, with a proportionate reduction in the remuneration. In any case, even in the event of slight negligence, it may demand compensation for the damage directly associated with this. In addition, section 27 applies.

## **27 Liability**

- 27.1 The parties are liable for all damages they cause to the other party unless they prove that they are not at fault. In any event, liability is limited to the actual, proven damage incurred; liability for loss of profits is excluded. Unless otherwise stipulated in the contract, liability for slight negligence, with the exception of personal injury, shall be limited to a maximum of CHF 1 million per contract. However, the limitation of liability shall apply only if the liable party took all reasonable measures to minimise the damage.
- 27.2 In accordance with section 27.1, the parties shall be liable for the conduct of their employees, other auxiliaries and third parties called upon for the purpose of contract performance (e.g. suppliers, subcontractors, substitutes) in the same way as for their own conduct.

## **28 Contract amendments, inconsistencies and partial invalidity**

- 28.1 Amendments and addenda to the contract as well as cancellation of the contract must be in writing.
- 28.2 In the event of inconsistencies between the provisions, the following order of precedence shall apply: contract document, GTC, quote request, offer.
- 28.3 If individual provisions of the contract prove to be invalid or unlawful, this shall not affect the validity of the contract. In such cases, the provision in question shall be replaced by an effective provision that is as equivalent as possible in economic terms. The same shall apply in the event of a gap in the contract.

## **29 Assignment and pledging**

The seller may not assign or pledge claims vis-à-vis the buyer unless the buyer has given its prior written consent. The buyer may refuse consent only in justified cases.

### **30 Applicable law and place of jurisdiction**

- 30.1 The contractual relationship shall be governed exclusively by substantive Swiss law.
- 30.2 Application of the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (Vienna Convention)<sup>17</sup> is expressly excluded.
- 30.3 If the buyer is a unit of the central Federal Administration or a unit of the decentralised Federal Administration without legal personality, the exclusive place of jurisdiction shall be **Bern**; in all other cases, it shall be at the buyer's registered office.

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<sup>17</sup> SR 0.221.211.1